IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 8417 of 2007(B)

OS.1/2002 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER:

BABU, S/O. CHACKO, AGED 36 YEARS,
RESIDING AT PADIKKAKUDI VEETTIL,
VAZHAPALLATHU, KIZHAKKENCHERRY,
KARENCHIRA POST,
ALATHUR, PALAKKAD DISTRICT.

BY ADV. SRI.JOHNSON P.JOHN
SRI.RAJU SEBASTIAN VADAKKEKKARA

RESPONDENT:

SUNNY, S/O. CHACKO, AGED 36 YEARS,
PARAKKAL VEETTIL, KONNAKKALKADAVIL,
KARENCHIRA POST, KIZHAKKENCHERRY,
ALATHUR TALUK, PALAKKAD DISTRICT, REP. BY
WIFE, CHIPPY SUNNY, W/O. SUNNY, RESIDING AT
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THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 8417 of 2007 B

JUDGMENT

The petitioner is the defendant in O.S.No.1/02 on the file of the Principal Sub Court, Palakkad. The suit is one for specific performance of contract for sale of an item of property belonging to the petitioner. It is submitted that the petitioner filed written statement denying execution of the agreement and receipt of Rs.1,40,000/-, mentioned therein as advance paid.

2. It is contended before me by the learned counsel for the petitioner that the scheduled property is lying together with other properties of the petitioner and that PW1, the wife of the respondent, has deposed that the scheduled property is in the possession of the respondent, when actually possession of the property is with the petitioner and that to establish all these matters and also to assess the value of land in the

locality, he applied for issue of a Commission, vide Exhibit P6 application, but, the court below without allowing the said application, has deferred its consideration after the evidence in the case is over by examining the parties, vide Exhibit P8 order, for the reason that trial had already begun. Counsel for the petitioner further submits that evidence of the plaintiffs is already over; that the evidence of the petitioner has to be recorded and that proof of affidavit is already filed.

3. It is worthy to note that the suit is one of the year 2002. Trial in the case began after duly notifying it in the special list one month earlier. Petitioner did not want any Commission to be issued then. To move for issue of a Commission, when the trial of the case is going on, by examining the witnesses, is an attempt to protract the litigation and cannot be entertained. The court below was rightly deferring the matter for consideration after the evidence in the case is

recorded. I do not see any reason to interfere with Exhibit P8 order and allow the request of the petitioner to have a Commission to be taken out at present in reversal of Exhibit P8 order.

This writ petition, in the circumstances, is devoid of merit and is dismissed.

13th March, 2007 (K.P.Balachandran, Judge)

tkv